

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Elbert Dingle,

Plaintiff(s),

vs.

Wal-Mart Stores East, L.P. and Eric Flores, an  
employee and agent of Wal-Mart Stores East,  
L.P.,

Defendant(s).

CIVIL ACTION NO. 4:14-cv-03931-RBH

**CONSENT ORDER TO REMAND**

This matter comes before the Court on Plaintiff's Motion to Remand this action to State Court on the basis that one of the named Defendants is a forum state resident. Defendants consent to this Motion to Remand. For reasons set forth below, The Court grants Plaintiff's Motion to Remand.

**BACKGROUND**

On September 9, 2011, Plaintiff was shopping with his wife in Wal-Mart Store #1135, operated by Defendant Wal-Mart Stores East, L.P., located in Hartsville, South Carolina. As he was walking down the aisle, Defendant Eric Flores was stocking and/or restocking the adjacent shelves with store products. (Dkt. Entry 22). Defendant Eric Flores is a citizen and resident of Darlington County, South Carolina. (Dkt. Entry 22). An object, believed and alleged to be a box of paper products, fell from the shelving above and struck Plaintiff unexpectedly on the head. Plaintiff has alleged certain injuries and damages due to this incident.

Plaintiff filed suit against Wal-mart Stores, Inc.- Store #1135 and John Doe, an employee and agent of Wal-mart Stores, Inc.-Store #1135 in Darlington County Court of Common Pleas on

September 5, 2014 being Case No. 2014-CP-16-0740. The Summons and Complaint was served upon the Registered Agent for Defendant, Wal-Mart Stores East, L.P. incorrectly styled as Wal-Mart Store, Inc- Store #1135. on September 9, 2014. On October 9, 2014, Defendants filed an Answer and Notice of Removal on behalf of Wal-Mart and John Doe in this Court.

On January 7, 2015, upon discovery of the identity of the Wal-Mart employee in question, now identified as Defendant Eric Flores, Plaintiff filed a Motion for Leave to Amend Complaint to Substitute Party Defendant and Correct Name of Party Defendant. This Court granted Plaintiff's Motion to Amend the Complaint to Substitute and Rename Party Defendants on January 27, 2015. (Dkt. Entry 17).

### **DISCUSSION**

As the party seeking to invoke the court's jurisdiction, defendant has the burden of proving jurisdiction upon motion to remand. Dixon v. Coburg Dairy, Inc., 369 F.3d 811, 816 (4<sup>th</sup> Cir. 2004) (citing Mulcahy v. Columbia Organic Chems. Co., 29 F.3d 148, 151 (4<sup>th</sup> Cir. 1994)). In deciding the motion, the federal court should construe removal jurisdiction strictly in favor of state court jurisdiction. *Id.* "If federal jurisdiction is doubtful, remand is necessary." Mulchany, 29 F.3d. at 151.

Title 28 U.S.C. § 1332(a)(1) grants district courts "original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of the interest and costs, and is between (1) citizens of different States..." Since the enactment of this statute, the Supreme Court of the United States has "interpreted the diversity statute to require 'complete diversity' of citizenship." Carden v. Arkoma Assocs., 494 U.S. 185, 187, 110 S.Ct. 1015, 108 L.Ed.2d. 157 (1990) (internal citation omitted). Thus, diversity jurisdiction exists, " 'so long as any two adverse parties are not co-citizens.'" Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68 n. 3, 117

S.Ct. 467, 136 L.Ed.2d 437 (1996) (quoting *State Farm Fire & Cas. Co v. Tashire*, 386 U.S. 523, 531, 87 S.Ct. 1199, 18 L.Ed. 270 (1967)).

Defendants Wal-Mart and Flores consent to Plaintiff's Motion to Remand this action to Darlington County Court of Common Pleas, due to jurisdiction issues arising out of the lack of complete diversity amongst all Defendants pursuant to 28 U.S.C. § 1332(a)(1).

### CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion for Remand.

**AND IT IS SO ORDERED**

s/R. Bryan Harwell

The Honorable R. Bryan Harwell  
United State District Judge

Florence, South Carolina

March 11, 2015

**We Consent:**

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